No. 12765.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

STANLEY WALTER ADAMS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR REHEARING.

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TABLE OF AUTHORITIES CITED

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To the Honorable Circuit Court of Appeals of the United States for the Ninth District:

The petition of appellant, Stanley Walter Adams, for a rehearing in the above entitled matter respectfully shows and represents:

That this Honorable Court did, on August 6, 1951, by its order duly entered and filed, affirm a judgment of conviction of your appellant for the crime of perjury. Appellant respectfully urges that the *Per Curiam* Opinion filed by this Court completely fails to dispose of important and substantial issues of law raised by appellant. Appellant seriously raised the question that the alleged perjury was not proved in the manner required by law; *i. e.,* by two direct witnesses, or by a direct witness and sufficient corroborating circumstances. The opinion of the Court, without any citation of authority and without any discussion of the factual basis upon which the

claimed errors are grounded, merely stated that the questions were solely for the jury.

We respectfully urge that if this Court holds, that as a matter of law that, irrespective of the testimony, that a jury can determine whether there has been corroboration or not it should so state. By its opinion this Court has in effect held that the matter of the insufficiency of the evidence is no longer a question of law, but that the jury can determine both where the truth lies and whether the evidence is sufficient or not and whether the evidence has been corroborated.

We sincerely believe that if this is the law the Court should so state based upon the factual situation before the Court and not merely gloss over the subject without referring to the facts. It is for the Court to determine the law, and we can have no complaint whichever way the Court determines the law, but we feel that we are entitled to know that there has been a change in judicial construction for future reference.

Apparently this Court does not question the requirement of corroboration in perjury cases:

Weiler v. U. S., 323 U. S. 606;
U. S. v. Seavely, 180 F. 2d 837;
Fotie v. U. S., 137 F. 2d 831.

There are many cases in the books holding that a judgment of conviction for perjury will be reversed in the absence of sufficient corroborating evidence:

Fotie v. U. S., 137 F. 2d 137;
Hart v. U. S., 131 F. 2d 59;
Phair v. U. S., 60 F. 2d 953;

Sullivan v. U. S., 161 Fed. 253;
People v. Woodcock, 52 Cal. App. 412;
Cook v. U. S., 26 App. D. C. 427.

Intellectual honesty requires a factual examination of this case. Appellant testified before the Grand Jury that he was in the barber shop in question on February 28, 1950, and he had been there on several other occasions. One witness and one witness alone, Erwin Sharpe, testified that it was not on February 28, 1950, that appellant was in the barber shop, but that it was on March 2, 1950 that appellant was in the barber shop. Erwin Sharpe also testified that appellant had been in the barber shop on a number of occasions. *No other witness testified that appellant was not in the barber shop on February 28, 1950.* George Sharpe testified that he himself was not in the barber shop on February 28, and he did not know who was in the shop on that date. He did, however, testify that he recalled that appellant was in the barber shop on Thursday or Friday of the week in question, which would place the date as March 2, or March 3. He did not and could not testify that appellant was not in the barber shop on February 28, for he himself was not there. He, too, admitted that appellant had been in the barber shop on a number of occasions.

The final futile effort to corroborate Erwin Sharpe came through the testimony of the third barber, Frank Riggi, who testified that appellant had been in the barber shop on several occasions, but on the first occasion that appellant was there, he recalled that both George and Erwin were there. He testified that he could not fix any day or dates and no attempt whatsoever was made to de-

termine whether Riggi was in the barber shop on either February 28 or March 2.

If this Court believes that there is sufficient corroboration in this record, it should state these facts in its opinion so that we may know that there has been a fundamental change in the necessary elements and ingredients of the doctrine of corroboration. What this Court has in effect held by affirming the judgment in this case is that Stanley Walter Adams' testimony that he was in the barber shop on February 28 was false because the government proved beyond any doubt that appellant was in the barber shop on March 2. If this is the law, and his presence on March 2 excludes the possibility of the truth of his testimony that he was there on February 28, this Court should so declare and state.

It is our reasoned opinion that there has been a serious miscarriage of justice in this case and that appellant was convicted as the result of confusion and of a failure to apply the recognized laws of perjury to his case.

Wherefore, appellant prays that the opinion filed on August 6, 1951 may be set aside and that a rehearing may be granted in this matter so that the Court may file its opinion passing upon the issues and errors relied upon

Dated: August 29, 1951.

Respectfully submitted,

Samuel Reisman and
Bertram H. Ross,
By Bertram H. Ross,
Attorneys for Appellant.

Certificate of Counsel.

The undersigned, attorneys for appellant, do hereby certify that in their opinion the foregoing petition for rehearing is well taken in point of law and has not been interposed for purposes of delay.

SAMUEL REISMAN and
BERTRAM H. ROSS,
Attorneys for Appellant.